IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.5225 OF 2003

M/s. Dinesh Gem & Anr. ...Petitioners.
Vs.
Union of India & Ors. ...Respondents.
....
Mr. A. S. Rao for the Petitioners.
None for the Respondents.
.....

CORAM : F. I. REBELLO AND
DR.D.Y.CHANDRACHUD, JJ.

February 27, 2006.

P.C.

The Petitioners were asked to deposit 10% of the amount on 24th December 2002. That had not been done. It appears that on various dates, the matter was adjourned and though the Petitioners were represented by Counsel, the Counsel also did not appear.

It is the case of Petitioner No.2 that his sister-in-law who was also a partner, has been exempted and in these circumstances, the Tribunal ought not to have ordered pre-deposit of 10 percent, more so, when the Petitioners herein had also

applied for waiver.

There is an order of adjudication against the Petitioners. It was in the discretion of the Tribunal to pass an order. In fact, there was a speaking order passed on 24th December 2002 wherein the order notes that the Appellant was represented. The contention urged on behalf of the Petitioners was that the Petitioners were bankrupt. The Tribunal perused the balance sheet of the year 1998-99 and found no case for exemption of the Petitioners from pre-deposit of the full penalty amount. However, considering the contentions raised regarding financial status, waiver was granted of pre-deposit of 90 percent of the penalty. It was within the jurisdiction of the Tribunal to grant waiver that has been exercised by a speaking order. The contention urged before us now was also urged before the Tribunal. We find no case for interference.

If the Petitioners within 8 weeks from today deposits the amount ordered to be deposited, the order of dismissal of appeal for failure to deposit shall stand quashed and the appeal to be

heard on merits. With the above observation, the petition stands disposed of.

(F. I. Rebello, J.)

(Dr.D. Y. Chandrachud, J.)